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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1678

MITZI S. BRIGGS,
Appellant,

vs.

STATE OF CALIFORNIA, etc.,
Appellee.

Appeal from the Court of Appeal of California
First Appellate District, Division Two

Motion to Dismiss or Affirm

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The State of California, appellee herein, respectfully moves this Honorable Court to dismiss the appeal now pending on the following grounds:

1. Jurisdiction does not lie under 28 U.S.C. § 1257(2), since the appellant has not "drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States...."

2. Jurisdiction does not lie, since the judgment of the California Court of Appeal rests on an independent and adequate nonfederal ground.

3. The appeal does not raise either a properly presented or a substantial federal question.

In the alternative, the State of California respectfully moves that the Court affirm the judgment of the California Court of Appeal, on the ground that the questions on which the decision of the cause depends are insubstantial, and do not require further argument.

I.

STATEMENT OF FACTS

The California Coastal Zone Conservation Act of 1972 was enacted by the People of the State of California as an initiative measure on November 7, 1972. The Act declared the California Coastal Zone to be a "delicately balanced ecosystem" whose preservation and protection for present and succeeding generations was a matter of paramount concern to the state and nation. Former Public Resources Code § 27001.[1]

The 1972 Act created the California Coastal Zone Conservation Commission and six regional commissions; it directed them to undertake whatever studies were necessary to determine the proper planning principles and assumptions needed to ensure the conservation and protection of California's coastal zone resources. Based upon those studies, the Commissions were directed to develop and adopt a California Coastal Zone Conservation Plan for submission to the Legislature. Former Public Resources Code §§ 27200-27201; 27300-27304; 27320. The Act required the Plan to include the Commissions' recommendations for

1. The coastal zone was generally described as extending from the seaward limit of state jurisdiction inland, with some exceptions, to the highest elevation of the nearest coastal mountain range. Former Public Resources Code § 27100. Unless otherwise specified, references in this motion are to California statutes. The 1972 Coastal Act is attached to this motion as Appendix A.

public purchase of private land. Former Public Resources Code § 27304(d).

During the period necessary for preparation of the Plan and consideration of it by the Legislature, the Commissions were granted broad regulatory controls over proposed developments within the permit area of the coastal zone.[2] Any person who wished to perform such a development was required to obtain a permit from the appropriate regional commission; any determination by the regional commission was thereafter subject to *de novo* administrative review on appeal by the state commission. Former Public Resources Code §§ 27400 and 27423.[3] The commissions could approve such an application only if they found that the proposed development would not have a substantial adverse environmental or ecological effect, and would not be inconsistent with the policies and objectives of the Act. Former Public Resources Code §§ 27400, 27423, 27402. The coastal commissions were not given the power of eminent domain by the Act; under California Government Code Section 15855, that power rests only with the State Public Works Board.

The 1972 Act, by its own terms, expired on December 31, 1976. Former Public Resources Code § 27650. Prior to that time, however, the commissions had prepared the required

2. The permit area was defined, with exceptions not pertinent here, as the portion of the coastal zone "lying between the seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the sea . . ." Former Public Resources Code § 27104.

3. The hearing and decision of the state commission "'. . . is binding upon the parties thereto and takes the place of and completely nullifies the former determination of the matter . . . .'" The hearing before the state commission "contemplates not merely a new public hearing, but that all matters involved are to be decided '"anew; afresh; over again."'" *REA Enterprises v. California Coastal Zone Conservation Commission* (1975) 52 Cal. App. 3d 596, 612-613.

California Coastal Plan, including recommendations for purchase of private property, and had submitted it to the California Legislature. The Legislature found that the Plan conformed to the requirements of the 1972 initiative. Public Resources Code § 30002. The Legislature concluded that some of the recommendations of the commissions were appropriate for immediate implementaion, that some of them required further study, and that other similar means were appropriate for implementation. Accordingly, the Legislature enacted the California Coastal Act of 1976 (Public Resources Code §§ 30000 et seq.); the 1976 Act carries out the stated desire of the People of the State of California for a permanent mechanism for the protection of the California coast.

The opinion of the California Court of Appeal correctly states some of the many facts of this case. Juris. St. App., A-3 to A-10. We reiterate and emphasize some of those facts here, however, since they are particularly essential to an understanding of the case.

The appellant acquired the vacant land at issue in this case in 1963 for $1,100,000. She subsequently decided to use the future anticipated profits from a proposed hotel development on the property, to repay an unrelated $5,000,000 loan.

The appellant's property lies within the permit zone established by the 1972 Coastal Act. In early 1973, she applied to the appropriate regional coastal commission for a permit to construct three large single family residences. After the executive director of the regional commission had prepared a staff report tentatively recommending approval of the residences, and before the required public hearing on the application, one of the commissioners of the regional commission contacted the Director of the State of

California Department of Parks and Recreation to determine whether the Department had any interest in purchase of the appellant's property.[4] The Department of Parks and Recreation subsequently sent a telegram to the regional commission stating that the Department "considers the Briggs property desirable as an addition to the existing Carmel River State Beach property." At the time of the telegram, however, the Department did not have either funding or legislative authority to purchase the property.[5]

The regional commission thereafter denied the permit application, and the appellant filed an administrative appeal to the state coastal commission. That commission accepted her appeal, and held a *de novo* hearing on the application. Former Public Resources Code § 27423(c). As

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4. The appellant seeks to pejoratively paint this contact as a "furtive, ex parte conversation . . . ." Juris. St. 13. In fact, the contact was disclosed and discussed during the public hearing on the application, as were the other contacts between the regional commission staff and the Department of Parks and Recreation.

5. As the Court of Appeal explained:

"Pursuant to the applicable statutes, the Department was able only to express its interest in the Briggs property. It was required to proceed in accordance with the Property Acquisition Law (commencing with Gov. Code, § 15850), and could not consummate the purchase of any property with funds from the 1974 act, unless the property was also approved by the State Park and Recreation Commission (Pub. Resources Code, § 5096.88) and the Secretary for Resources (§§ 5096.90, 5096.91), and until the Legislature and Governor had approved an appropriation of funds (§ 5096.91). Public Resources Code section 5096.94 also specifies that 'Acquisition for the state park system by purchase or by eminent domain shall be under the Property Acquisition Law . . . notwithstanding any other provision of law.' Government Code section 15855, subdivision (a) declared, so far as pertinent, that 'the State Public Works Board is the only state agency that may exercise the power of eminent domain to acquire property needed by any state agency for any state purpose or function.'" Juris. St. App., A-19 and A-20.

the California Court of Appeal recognized in its decision, under California law the state commission's proceedings "completely nullify the former determinations of the Regional Commission . . ." Juris. St. App., A-3 n. 2.

After hearing, the state commission denied the permit application, adopting its staff recommendation as its findings. The trial court found that the reasons given by the state commission were in fact the reasons for the denial. Juris. St. App., A-33 (Finding 24). As will be discussed later, those findings clearly establish an independent and adequate non-federal ground for the opinion of the Court of Appeal.

The state commission's findings state the following reasons for its action:

> "1. *Open Space Use.* The parcel is one of two privately-owned coastal areas between Point Lobos and the mouth of the Carmel River. The California Department of Parks and Recreation considers the property desirable as an addition to the Carmel River State Beach property. *Although the State Parks Department does not have a definite commitment to purchase the property, there is clearly a need for preserving the Commission's planning options as to coastal parks in this area.* Because of the manner in which the 3 homes would be spaced along the ocean bluff, construction of the homes would foreclose the possibility of acquiring either all the ocean front property or acquiring only portions and allowing the rest to be developed.
>
> *"Even if the Commission's planning process were to determine the acquisition is not desirable, it is too early in the planning process to decide that development should proceed in the manner proposed by applicant.* It might be preferable to require clustered development on the portion of the property adjoining an existing subdivision, with the remainder of the property left as open space, to maintain as much as possible of the scenic qualities of the property.
>
> "2. *Inducement to Development.* Although the proposed project consists only of the construction of 3 large homes, the applicant's claim of exemption states that the total development will have 2 more stages, 1 of which is a subdivision application in operation and the second of which is a planned unit development currently in the si [sic] stage. Once the 3 homes are built, the property will be foreclosed from any significant open space or recreational use along the ocean front, which will in turn on [sic] that the property will be committed to further development. The road servicing the three homes runs along almost the entire ocean frontage of the property and together with utility extensions would encourage further development." (Emphasis partially added by California Court of Appeal). Juris. St. App., A-4 and A-5.

These findings of the state commission were never challenged within the applicable period of time for review of the decision, and under California law they are now immune from collateral attack in this case. Juris. St. App., A-5 n. 3; *Stockton v. Department of Employment,* 25 Cal. 2d 264, 267-268 (1944).

Prior to and after the denial of the appellant's application, the coastal commissions were preparing the California Coastal Plan. As required by statute, that Plan eventually included recommendations for the permanent protection of the California coastline.[6] The plan recommended the purchase of 154 parcels of privately owned coastal land, distributed along the length of the California

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6. The appellant incorrectly states that "no such plan has been finally adopted." Juris. St. 12 n. 6. The plan itself is part of the record in this case, introduced into evidence by the appellant. Plaintiff's Exhibit 34-B.

coast, including the appellant's property. The total estimated fair market value of the recommended acquisitions was more than $180,000,000.

Following the denial of the permit application, the Department of Parks and Recreation continued to express its interest in possible purchase of the property. In September 1973, the Department wrote that it was interested in possible purchase, but that funds were not available. Juris. St. App., A-5. In May 1974, the Director of the Department met with the appellant and her attorneys, and advised them that the Department was interested in purchase, but that a prerequisite to any determination on the question of purchase was the passage of a bond issue by the California electorate. Juris. St. App., A-6. The Director indicated that other prerequisites to a determination of the question of purchase also involved the adoption of a resolution authorizing acquisition, normal appraisal procedures, and negotiation for purchase. Juris. St. App., A-7. The bond issue was passed by the California electorate in June 1974, and money was appropriated in September 1974 by the California Legislature for the purchase of numerous properties, including the appellant's, subject, *inter alia*, to the usual requirements of the California Property Acquisition Law. See Juris. St. App., A-48 to A-55.

The Court of Appeal opinion details the adminstrative steps which followed. Juris. St. App., A-8 and A-9. The State Public Works Board subsequently authorized acquisition and condemnation, and a direct condemnation action was filed on December 31, 1976.[7] In that action, the State deposited $1,750,000 into Court, and the appellant withdrew

7. California law requires the filing of a *lis pendens* concurrently with the filing of a condemnation complaint. Calif. Code of Civil Procedure § 1250.150.

that amount for her use in June, 1977. That action is still pending in the California Superior Court.[8]

The trial court found that the denial of the permit by the coastal commission had unconstitutionally damaged the appellant's property, and that she was entitled to damages for that denial alone. Juris. St. App., A-46, A-11.[9] The trial court also found that the State had "taken" the appellant's property on March 27, 1975. Juris. St. App., A-11. Judgment was ultimately entered for $6,429,437 against the State. On the State's appeal, the Court of Appeal reversed the judgment in its entirety.

This case thus does not raise the issues suggested by the appellant. It does not involve "private property slated for condemnation which is then delayed . . ." Juris. St. 21. Neither does it involve "precondemnation activities that cause a blighting of property slated for acquisition . . ." Juris. St. 31. In fact, this case involves a permit denial by the state commission under the 1972 Coastal Act, a subsequent recommendation in 1976 for purchase of the appellant's land as part of the Coastal Plan, contemporaneous consi eration of possible purchase by the Department of Parks and Recreation, appropriation of money by the California Legislature, a final determination by the State Public Works Board that the property ought to be condemned for public park purposes, and the filing of a condemnation

8. Trial of that action was stayed by the California Court of Appeal, on the State's petition. The Court of Appeal opinion in that proceeding carefully details the compelling reasons for that stay. That opinion is attached hereto as Appendix B.

9. The trial court, after hearing testimony regarding the appellant's apparently unsuccessful investments in silver commodity straddles, the Tropicana Hotel and Casino in Las Vegas, and the like, awarded $469,000 in damages based on the permit denial. C. T. 849, 854.

action. As demonstrated in Section IV, *infra,* at most it involves a temporary denial of use pending the adoption of a comprehensive plan for the future of the California coastline and pending consideration of a possible recommendation of purchase of the land as part of that plan; it does not involve a denial of use at a time when the State had affirmatively and finally determined to purchase the property. As will also be demonstrated in Section III, *infra,* it also involves a temporary denial of use, on grounds completely apart from any consideration of possible acquisition.

II.

THIS CASE DOES NOT INVOLVE THE VALIDITY OF ANY STATUTE OF THE STATE OF CALIFORNIA, WITHIN THE MEANING OF 28 U. S. C. § 1257(2), AND JURISDICTION THEREFORE DOES NOT LIE OVER THE APPELLANT'S APPEAL.

The Court of Appeal opinion and the appellant's jurisdictional statement make clear that the constitutional validity of the California Coastal Zone Conservation Act of 1972 is not at issue. Instead, the appellant challenges both the administrative decision of the state coastal commission, and what she contends is an unconstitutional course of conduct by several state agencies. Her appeal therefore does not draw "in question the validity of a statute of any state" within the meaning of 28 U.S.C. § 1257(2). Since her constitutional questions "relate primarily, and more substantially, to the propriety of the findings" made by the state coastal commission, the Court lacks jurisdiction over her appeal. *Lerner v. Casey,* 357 U.S. 468, 473 (1958).[10]

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10. The cases cited by the appellant in her jurisdictional statement (Juris. St. 4) are inapposite. Some are cases involving appeals from the federal Courts of Appeals. The cases involving appeals from state court judgments each involved the claimed invalidity of a local ordinance or state statute.

III.

JURISDICTION DOES NOT LIE, SINCE THE JUDGMENT OF THE CALIFORNIA COURT OF APPEAL RESTS ON AN INDEPENDENT AND ADEQUATE NONFEDERAL GROUND.

The appellant seeks review by this Court on the basis of allegedly "inequitable governmental precondemnation activities [which] effect a de facto taking of property slated for condemnation . . ." Juris. St. 21. As we discuss in Section IV of this motion, *infra,* this appeal does not properly present that question. The opinion of the California Court of Appeal, moreover, makes clear that it rests on independent and adequate nonfederal grounds which do not involve the questions raised by the appellant. For this reason, the Court lacks jurisdiction over her appeal. *Zacchini v. Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 568 (1977).

As previously noted, the California Coastal Zone Conservation Act of 1972 was an interim measure, and it expired by its own terms on December 31, 1976. Former Public Resources Code § 27650. The Act declared that the coastal zone is a "distinct and valuable natural resource," that it exists as a "delicately balanced ecosystem," and that "the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation." Former Public Resources Code § 27001. In upholding the constitutionality of the 1972 Act, the Court of Appeal commented on these findings by the People, and added its own pertinent observations:

> "Not only are these legislative findings and declarations entitled to great weight (citations omitted), they are largely matters of common knowledge, fully documented by governmental studies. (Fn. omitted). 'The

deleterious consequences of haphazard community growth in this state and the need to prevent further random development are evident to even the most casual observer.' (*Selby Realty Co. v. City of San Buenaventura,* 10 Cal.3d 110, 120.) This is particularly true of our 1,000 mile coastline. Visual, as well as physical, access to large segments of our beaches has been obstructed by residential, commercial and industrial development. Dredging and filling of lagoons and estuaries for boat marinas to promote residential development of adjacent lands have destroyed salt water marshes which have provided homes for birds, plants and animal life unique to the California Coastal Zone. Disposal of sewage and industrial and agricultural waste into the ocean has resulted in the extinction of many plant and sea life causing an imbalance in the delicate coastal ecosystem. Excessive onshore development has resulted in erosion of the shoreline and remedial actions in the form of construction of groins and revetments have affected ocean currents causing erosion elsewhere.

"More than three-fourths of California's 20,000,000 population live within an hour's drive of the Pacific Ocean. Each year thousands of people are turned away from coastal state parks and campgrounds because of inadequate facilities.

"Resolution of the environmental and ecological problems arising out of the competing and conflicting demands made upon the use and enjoyment of the California shoreline has proven to be beyond the capabilities of local governmental agencies. The present coastal land allocation system has failed to protect the public interest." *CEEED v. California Coastal Zone Conservation Commission* (1974) 43 Cal.App.3d 306, 321-322.

Because "[t]he present coastal land allocation system ha[d] failed to protect the public interest," the 1972 Act

established the six regional commissions and the California Coastal Zone Conservation Commission and charged them with the primary duty of preparing a Coastal Plan for submission to the Governor, the Legislature and the People, a Plan designed to ensure the "maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values." Former Public Resources Code § 27302.

The Act also established the permit system, under which any person who wished to perform a development within the coastal permit area was required to obtain a permit from the appropriate regional commission. Former Public Resources Code §§ 27400-27405. "Thus, the requirement for a permit [was] an interim measure to assure that developments in the coastal zone [were] consistent with the objectives of the Act so that priceless coastal resources [were] not irreversibly committed to uses which would be inconsistent with the plan ultimately developed." *State of California v. Superior Court (Veta)* (1974) 12 Cal.3d 237, 253.

It is in this context that the propriety of the state commission's action on the appellant's permit application must be judged; the commission's action can only be viewed as an integral part of an interim and comprehensive statewide effort to plan for the future of California's shoreline.

As noted above, the state commission denied the permit application on an alternative ground completely separate from any possibility of acquisition: it concluded that "[e]ven if the Commission's planning process were to determine the acquisition is not desirable, it is too early in the planning process to decide that development should proceed in the manner proposed by applicant." Juris. St. App., A-4 (emphasis omitted). The state commission's denial of the permit on this independent ground does not raise the

"inequitable precondemnation activities" argued by the appellant as the basis for her appeal. The Court of Appeal recognized this separate ground, and stated:

> "Briggs' contentions also ignore the fact that the State Commission's denial of her permit was based on grounds totally independent of the Department's interest in purchasing her property. The [trial] court so found and the record indicates that the State Commission's denial was also based on: 1) the need for preserving its planning options as to coastal parks, independent of the purchase; and 2) in the absence of acquisition to consider the effect of Briggs' entire plan on the development of the area. Both of these were proper and consistent with the statutory mandate of the 'permanent protection' of the remaining natural and scenic resources of the coastal area and preserving its amenities and aesthetic values . . . .
>
> "Thus . . . the permit denial was based on several independent reasons and, therefore, could not provide a basis for the inverse condemnation judgment."
>
> . . . .
>
> "The State Commission's denial of the permit for reasons independent of the Department's acquisitory interest are beyond attack . . . and do not, as a matter of law, support the trial court's conclusion of inverse condemnation." Juris. St. App., A-15, A-16, A-17.

The propriety of a temporary land use regulatory measure pending adoption of a comprehensive land use plan has long been established. In *Miller v. Board of Public Works,* 195 Cal. 477 (1925), the Court upheld an interim prohibition against the construction of certain types of residences, on the ground that the city was contemplating a comprehensive zoning plan covering the entire city. The Court held that a zoning plan of the extent contemplated would take considerable time to develop, and that it would be destructive

of the plan ultimately adopted if, "during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan." 195 Cal. at 496. This Court subsequently dismissed an appeal from the California Supreme Court's judgment. 273 U. S. 781 (1926).

More recently, the California Supreme Court upheld a City's initiative measure establishing a temporary two-year freeze on any modification of existing zoning regulations, pending comprehensive study of the impact of further development. *Builders Association of Santa Clara-Santa Cruz Counties v. Superior Court,* 13 Cal.3d 225 (1975). This Court dismissed an appeal from the judgment for want of a substantial federal question. 427 U.S. 901 (1976). Other state courts have also consistently upheld similar interim or "stopgap" ordinances. See Rathkopf, *The Law of Zoning and Planning,* ch. 11 (1979 ed.).

The same principles have impelled the California courts to uphold actions by the coastal commissions denying applications for permits, under the interim scheme of regulation established by the 1972 Coastal Act. E. g., *State of California v. Superior Court (Veta),* 12 Cal.3d 237 (1974); *Patterson v. Central Coast Commission,* 58 Cal.App.3d 833 (1976); *Davis v. California Coastal Zone Conservation Commission* 57 Cal.App.3d 700 (1976); *Reed v. California Coastal Zone Conservation Commission,* 55 Cal.App.3d 889 (1975); *CEEED v. California Coastal Zone Conservation Commission, supra,* 43 Cal.App.3d 306; see also *Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission,* 11 Cal.App.3d 557 (1970).

Under these cases, the state commission could properly deny the appellant's permit application during the interim

period of regulation established by the 1972 Coastal Act, and pending development and adoption of the comprehensive plan for the future of the California coast. As noted, the permit denial in this case was based on grounds completely apart from any possibility of public purchase of the appellant's property: the permit denial on those grounds therefore does not raise any question whatsoever of "inequitable governmental precondemnation activities . . . ." The California Court of Appeal explicitly concluded that the denial on this independent ground was authorized by the 1972 Coastal Act. Juris. St. App., A-15 and A-16. For these reasons, appellees respectfully submit that the judgment of the Court of Appeal rests on an adequate and independent nonfederal ground, not involving the questions raised by the appellant, and that the appellant's appeal should therefore be dismissed for want of jurisdiction.

IV.

THE APPEAL DOES NOT RAISE EITHER A PROPERLY PRESENTED OR A SUBSTANTIAL FEDERAL QUESTION.

As noted above, the appellant asserts that the Court should hear this appeal, since it involves "inequitable governmental precondemnation activities [which] effect a de facto taking of property slated for condemnation . . ." Juris. St. 21. Even assuming that the judgment does not rest on independent grounds not involving that issue, this case does not properly present the questions suggested by the appellant. For that reason, we do not discuss the alleged conflict in the cases cited by the appellant. In addition, the appeal does not raise a substantial federal question.

1. The appellant continually asserts that at all relevant times the State of California had an "announced and widely

publicized intention to acquire the subject property for a beach park . . ." Juris. St. 17. As previously mentioned, however, the State did not and could not determine to purchase the property until September 27, 1976, when the State Public Works Board authorized its acquisition. Juris. St. App., A-9, A-19, A-20. As the California Court of Appeal noted, "[t]he record indicates that the State Public Works Board condemnation resolution was not passed until three years after the State [Coastal] Commission's denial of the permit." Juris. St. App., A-19 n. 8. The actions of the State therefore occurred at a time when the State was engaged in its comprehensive planning process for the California coastline, and at a time when several agencies had expressed some interest in possible purchase, but *not* at a time when the State had firmly and finally determined to purchase the appellant's property.

2. When the state coastal commission denied the appellant's permit application, the interim period of Coastal Act regulation had barely begun, and the commissions were at the very beginning of their interim planning process. That planning process was subsequently completed within statutory time limits, and included a recommendation for the purchase of the appellant's property by the State of California; during the period while the California Coastal Plan was in preparation, the California Department of Parks and Recreation contemporaneously was also considering the possible purchase of the property. The State Public Works Board considered the recommendations of both agencies, and in fact determined to utilize the State's power of eminent domain for that purchase. The condemnation action was filed, and is now pending. Juris. St. App., A-10. This case therefore does not involve a situation in which the State constantly changed its mind; it does not involve a

situation where the State vacillated in its planning process, or failed to carry out the recommendations resulting from that process.

3. Even the appellant recognized at the time of the coastal commission's actions that the State of California had not determined to purchase her property. Her counsel testified to the state commission during its administrative proceedings that he "wrote to the State Parks and Recreation Department and was told that it did not have any intention of acquiring the property." Def. Ex. 6, p. 17. The findings of the state commission, moreover, explicitly state that "[a]though the State Parks Department does not have a definite commitment to purchase the property, there is clearly a need for preserving the Commission's planning options as to coastal parks in this area." Juris. St. App., A-4.

4. Although the trial court did phrase many of its findings with regard to the administrative actions involved in this case in terms of the State's "intent" to purchase the appellant's property, the appellee has consistently contended in the California courts, and would so contend here, that those findings, as well as others, are either legally inadequate to sustain the judgment or without sufficient evidentiary support. The appellee's opening brief in the Court of Appeal devoted all or part of twenty-nine pages to these questions alone. The California Court of Appeal recognized the validity of the appellee's contentions, since it declared that it would not "discuss the errors in the findings and conclusions or the insufficiency of the evidence unless pertinent to our disposition of the appeal." Juris. St. App., A-3 n. 1. In the course of its opinion, the Court squarely held that some of the trial court's findings on which the appellant even now explicitly relies were not

supported by the evidence.[11] That the appellant continues to urge the trial court's findings in support of her case, notwithstanding the recognition by the Court of Appeal of their lack of evidentiary foundation, is reason enough by itself for this Court to decline review. *Southern Power Company v. North Carolina Public Service Company,* 263 U.S. 508 (1924) (certiorari dismissed where factual dispute on question whether "evidence sufficed to established actual dedication of petitioner's property to public use . . .").

5. Finally, the interim scheme of regulation established by the 1972 Coastal Act is no longer effective. The California Coastal Act of 1976 (Public Resources Code §§ 30000 et seq.), enacted by the California Legislature after consideration of the Coastal Plan, contains no provision which now authorizes a denial of a permit on the ground that the property should be considered in a comprehensive plan for possible public acquisition. Indeed, the 1976 Act contains legislative direction to the contrary. Public Resources Code section 30604(e) now provides:

> "No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property on, which the proposed development is to be located, unless the public agency has been specifically authorized to acquire

11. The appellant suggests, for example, that the Director of the Department of Parks and Recreation represented that "as soon as the voters adopted [the] State Beach Park Recreation and Historical Facilities Bond Act of 1974, Appellant's property would be promptly acquired . . . but no good faith attempt was made to acquire the subject property by purchase . . . ." Juris. St. 16 n. 11. There is absolutely no finding whatsoever of the trial court which concludes that the State failed to make a good faith effort to acquire the property by purchase. The Court of Appeal did hold, however, that the "findings that the passage of the bond issue was the only condition to the state's acquisition and that all other steps were mere procedural formalities is not supported by the evidence." Juris. St. App., A-6 n. 4.

> such property and there are funds available, or funds which could reasonably be expected to be made available within one year, for such acquisition. If a permit has been denied for such reason and the property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for such development on grounds that such property or adjacent property is to be acquired by a public agency when the application for such a development is resubmitted."

The expiration of the 1972 Act and the enactment of a new statutory provision which precludes similar future action by the coastal commissions strongly counsels against review by the Court in this case. *Rice v. Sioux City Cemetery,* 349 U.S. 70 (1955).

This case thus involves interim regulation designed to provide temporary protection for significant natural resources, while a state agency prepared, for legislative consideration, a comprehensive plan for the permanent protection of those resources. It also involves a denial of a permit application under that interim regulatory measure, in part on the ground that the property involved should be considered as a recommendation for public purchase as part of that comprehensive plan. The constitutional issues raised by these facts have been consistently answered by the California courts, and do not raise substantial federal questions.

A. In *State of California v. Superior Court (Veta), supra,* 12 Cal.3d 237, the developer's application was denied, in part on the ground of possible public purchase. The Court rejected a claim of inverse condemnation:

> "[D]enial of a building permit to Veta on the ground that the land it proposes to develop may ultimately be

> designated for public use in the coastal zone plan . . . does not amount at this time to a taking of property for public use without compensation." 12 Cal.3d at 255.

B. In *CEEED v. California Coastal Zone Conservation Commission, supra,* 43 Cal.App.3d 306, the Court reiterated the *Veta* holding, and concluded that a denial of a permit so that the land could be maintained undeveloped for the interim period of the 1972 Act pending consideration of possible acquisition did not constitute inverse condemnation. 43 Cal.App.3d at 324-325.

C. In *Patterson v. Central Coast Commission, supra,* 58 Cal.App.3d 833, the Regional Commission denied a permit, on the ground that the property was highly appropriate for public beach purposes and should therefore be considered for public purchase as part of the Coastal Plan. The Court of Appeal upheld the decision, and reversed a judgment directing the issuance of the permit:

> ". . . [T]he record shows that the city and respondent recognized the potential recreational value of the property, and public acquisition had been rejected only for lack of funds, not lack of interest . . . .
>
> "Respondent's proposed development would commit the land to private residences for the foreseeable future. The policy expressed in the Act includes protection and preservation of the remaining natural and scenic resources of the coastal zone . . . . While the effect of the scheme may be to prohibit much, or even most development within the coastal zone during the interim permit period, we reiterate that this is a legitimate exercise of the police power." 58 Cal.App.3d at 849-850.

D. The same result was also reached in *People v. Superior Court (Tidwell),* 91 Cal.App.3d 95 (1979).

These cases are clearly correct. Indeed, the Fourth Circuit recently dismissed on appeal involving these same questions, on the ground that the appeal did not raise any federal question, and this Court thereafter denied certiorari. *Donohoe Construction Co. v. Montgomery County Council,* 567 F.2d 603 (4th Cir. 1977), cert. den. 438 U.S. 905 (1978). For these reasons, we respectfully submit that the appeal must be dismissed, on the grounds that it fails to raise either a properly presented or a substantial federal question.

V.

THE APPELLANT'S "SPECIAL REQUEST FOR RELIEF" SHOULD BE DENIED.

Finally, the appellant suggests that the Court of Appeal opinion "was disposed of below on the authority of *Agins v. City of Tiburon,* 24 Cal.3d 266 . . . which is now pending before this Court." Juris. St. 10. The appellant therefore urges if *Agins* is reversed, the trial court's judgment in this case should be reinstated. That request should be denied for two separate reasons.

First, the appellant's claim substantially misstates the Court of Appeal's opinion.[12] After stating the facts of the

12. The appellant also misstates the opinion in suggesting that "[p]urporting to apply the California Supreme Court's opinion in *Agins,* the court below ruled that Appellant could not seek just compensation when she was completely stripped of her property rights, because her supposed 'remedy' was an action for non-monetary relief which . . . could only be brought some 1½ years before her cause of action accrued . . . ." Juris. St. 20. The Court of Appeal's discussion was directed to the portion of the trial court judgment which had awarded $469,300 in damages to the appellant based *solely* on the permit denial. Juris. St. Am., A-10 and A-11. The Court did not rely on *Agins* for other than that purpose. Her cause of action for damages based on the permit denial accrued at the time of the administrative action; the appellant consistently contended in her briefs before the trial court that she was entitled to damages based solely on that action.

case (Juris. St. App., A-1 to A-11), the Court held that the state commission could properly deny a permit during the interim period of the 1972 Coastal Act, in order to determine whether the property should be recommended for public purchase as part of the Coastal Plan. Juris. St. App., A-11 to A-14. The Court of Appeal further held that the appellant's "contentions ignore the fact that the State Commission's denial of her permit was based on grounds totally independent of the Department's interest in purchasing her property." Juris. St. App., A-15. As a third alternative ground for its decision, the Court of Appeal concluded that even if the denial of the permit was constitutionally impermissible, *Agins* specified that the appropriate remedy was invalidation of the administrative action, rather than an award of damages. Juris. St. App., A-14 to A-15. Thus, the judgment below clearly was *not* based solely on the authority of *Agins.*

Under these circumstances, the appellant's request is improper. Even if *Agins* is reversed, the opinion could not compel reversal of the judgment in this case, since the Court of Appeal properly concluded that no "taking" in fact occurred.

Secondly, as noted above, the appellee contends that most of the critical factual findings upon which the appellant's case must rest are unsupported by substantial evidence. The Court of Appeal agreed, but indicated that it did not need to "discuss the errors in the findings and conclusions or the insufficiency of the evidence unless pertinent to our disposition of the appeal." Juris. St. App., A-3 n. 1. The appellee believes that those factual challenges alone require reversal of the trial court's judgment. Reinstatement of the judgment would thus deprive the appellee of an opportunity to have those factual challenges more fully analyzed by the California Court of Appeal.

CONCLUSION

For the reasons expressed above, the appeal should be dismissed for lack of jurisdiction. Jurisdiction does not lie under 28 U. S. C. § 1257(2), and the judgment of the Court of Appeal rests on a substantial and independent nonfederal ground not involving the questions argued by the appellant. Moreover, the appeal does not raise either a properly presented or a substantial federal question.

Treating the papers upon which the appeal has been taken as a petition for a writ of certiorari under 28 U. S. C. § 2103, certiorari should be denied. If the Court determines that it has jurisdiction over the appeal, the judgment of the California Court of Appeal should be affirmed without further argument.

Respectfully submitted,

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(Appendices Follow)

APPENDICES

Appendix A

California Coastal Zone Conservation Act of 1972

(California Public Resources Code)

27000. This division may be cited as the California Coastal Zone Conservation Act of 1972.

27001. The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations; and that to protect the coastal zone it is necessary:

(a) To study the coastal zone to determine the ecological planning principles and assumptions needed to ensure conservation of coastal zone resources.

(b) To prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan.

(c) To ensure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.

(d) To create the California Coastal Zone Conservation Commission, and six regional coastal zone conservation commissions, to implement the provisions of this division.

CHAPTER 2. DEFINITIONS

27100. "Coastal zone" means that land and water area of the State of California from the border of the State of Oregon to the border of the Republic of Mexico, extending seaward to the outer limit of the state jurisdiction, including all islands within the jurisdiction of the state, and extending inland to the highest elevation of the nearest coastal mountain range, except that in Los Angeles, Orange, and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance.

27101. "Coastal zone plan" means the California Coastal Zone Conservation Plan.

27102. (a) "Commission" means the California coastal zone conservation commission.

(b) "Regional commission" means any regional coastal zone conservation commission.

27103. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land pursuant to the Subdivision Man Act and any other division of land, including

lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphan, aqueduct, telephone line, and electrical power transmission and distribution line.

27104. "Permit area" means that portion of the coastal zone lying between the seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the sea subject to the following provisions:

(a) The area of jurisdiction of the San Francisco Bay Conservation and Development Commission is excluded.

(b) If any portion of any body of water which is not subject to tidal action lies within the permit area, the body of water together with a strip of land 1,000-feet wide surrounding it shall be included.

(c) Any urban land area which is (1) a residential area zoned, stabilized and developed to a density of four or more dwelling units per acre on or before January 1, 1972; or (2) a commercial or industrial area zoned, developed, and stabilized for such use on or before January 1, 1972, may, after public hearing, be excluded by the regional commission at the request of a city or county within which such area is located. An urban land area is "stabilized" if 80 percent of the lots are built upon to the maximum density or intensity of use permitted by the applicable zoning regulations existing on January 1, 1972.

Tidal and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach shall not be excluded.

Orders granting such exclusion shall be subject to conditions which shall assure that no significant change in density, height, or nature of uses occurs.

An order granting exclusion may be revoked at any time by the regional commission, after public hearing.

(d) Each regional commission shall adopt a map delineating the precise boundaries of the permit area within 60 days after its first meeting and file a copy of such map in the office of the county clerk of each county within its region.

27105. "Person" includes any individual, organization, partnership, and corporation, including any utility and any agency of federal, state, and local government.

27106. "Sea" means the Pacific Ocean and all the harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through a connection with the Pacific Ocean, excluding nonestuarine rivers and creeks.

CHAPTER 3. CREATION, MEMBERSHIP, AND POWERS OF COMMISSION AND REGIONAL COMMISSIONS

Article 1. Creation and Membership of Commissions and Regional Commissions

27200. The California Coastal Zone Conservation Commission is hereby created and shall consist of the following members:

(a) Six representatives from the regional commissions, selected by each regional commission from among its members.

(b) Six representatives of the public who shall not be members of a regional commission.

27201. The following six regional commissions are hereby created.

(a) The North Coast Regional Commission for Del Norte, Humboldt, and Mendocino Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) Six representatives of the public.

(b) The North Central Coast Regional Commission for Sonoma, Marin, and San Francisco Counties shall consist of the following members:

(1) One supervisor and one city councilman from Sonoma County and Marin County.

(2) Two supervisors of the City and County of San Francisco.

(3) One delegate to the Association of Bay Area Governments.

(4) Seven representatives of the public.

(c) The Central Coast Regional Commission for San Mateo, Santa Cruz, and Monterey Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) One delegate to the Association of Bay Area Governments.

(3) One delegate to the Association of Monterey Bay Area Governments.

(4) Eight representatives of the public.

(d) The South Central Coast Regional Commission for San Luis Obispo, Santa Barbara, and Ventura Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) Six representatives of the public.

(e) The South Coast Regional Commission for Los Angeles and Orange Counties shall consist of the following members:

(1) One supervisor from each county.

(2) One city councilman from the City of Los Angeles selected by the president of such city council.

(3) One city councilman from Los Angeles County from a city other than Los Angeles.

(4) One city councilman from Orange County.

(5) One delegate to the Southern California Association of Governments.

(6) Six representatives of the public.

(f) The San Diego Coast Regional Commission for San Diego County shall consist of the following members:

(1) Two supervisors from San Diego County and two city councilmen from San Diego County, at least one of whom shall be from a city which lies within the permit area.

(2) One city councilman from the City of San Diego, selected by the city council of such city.

(3) One member of the San Diego Comprehensive Planning Organization.

(4) Six representatives of the public.

27202. All members of the regional commissions and public members of the commission shall be selected or appointed as follows:

(a) All supervisors, by the board of supervisors on which they sit;

(b) All city councilmen except under subsections (e) (2) and (f) (2), by the city selection committee of their respective counties;

(c) All delegates of regional agencies, by their respective agency;

(d) All public representatives, equally by the Governor, the Senate Rules Committee and the Speaker of the Assembly, provided that the extra member under (b) (4) and the extra members under (c) (4) shall be appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly respectively.

Article 2. Organization

27220. Each public member of the commission or of a regional commission shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses in light of the policies set forth in this division, to be responsive to the scientific, social, esthetic, recreational, and cultural needs of the state. Expertise in conservation, recreation, ecological and physical sciences, planning, and education shall be represented on the commission and regional commissions.

27221. Each member of the commission and each regional commission shall be appointed or selected not later than December 31, 1972.

Each appointee of the Governor shall be subject to confirmation by the Senate.

27222. In the case of persons qualified for membership because they hold a specified office, such membership ceases when their term of office ceases. Vacancies which occur shall be filled in the same manner in which the original member was selected or appointed.

27223. Members shall serve without compensation, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement is not otherwise provided by another

public agency. Members who are not employees of other public agencies shall receive fifty dollars ($50) for each full day of attending meetings of the commission or of any regional commission.

27224. The commission and regional commissions shall meet no less than once a month at a place convenient to the public. Unless otherwise provided in this division, no decision on permit applications or on the adoption of the coastal zone plan or any part thereof shall be made without a prior public hearing. All meetings of the commission and each regional commission shall be open to the public. A majority affirmative vote of the total authorized membership shall be necessary to approve any action required or permitted by this division, unless otherwise provided.

27225. The first meeting of the commission shall be no later than February 15, 1973. The first meeting of the regional commissions shall be no later than February 1, 1973.

27226. The headquarters of the commission shall be within the coastal zone.

Article 2.5. Conflicts of Intereset

27230. Except as hereinafter provided none of the following persons shall appear or act, in any capacity whatsoever except as a representative of the state, or political subdivision thereof, in connection with any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which the coastal zone plan, or the commission or any regional commission is involved in an official capacity:

(a) Any member or employee of the commission or regional commission;

(b) Any former member or employee of the commission or regional commission during the year following termination of such membership or employment;

(c) Any partner, employer, an employee of a member or employee of the commission or any regional commission, when the matter in issue is one which is under the official responsibility of such member or employee, or in connection with which such member or employee has acted or is scheduled to act, in any official capacity whatsoever.

27231. No member or employee of the commission or any regional commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interest: the member or employee himself; his spouse; his child; his partner; any organization in which he is then serving or has, within two years prior to his selection or appointment to or employment by such commission or regional commission, served, in the capacity of officer, director, trustee, partner, employer or employee; any organization within which he is negotiating for or has any arrangement or understanding, concerning prospective partnership or employment.

27232. In any case within the coverage of Section 27230, the prohibitions therein contained shall not apply if the person concerned advises the commission in advance of the nature and circumstances thereof including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the commission a written determination that the contemplated action will not adversely affect the integrity of the commission or any regional commission. Any such determination shall require the affirmative vote of two-thirds of the members of the commission.

27233. Nothing in this article shall preclude any member of the commission or any regional commission, who is also a county supervisor or city councilman, from voting or otherwise acting upon a matter he has previously acted upon in such designated capacity.

27234. Any person who violates any provision of this article, shall upon conviction, and for each such offense, be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison for not more than two years, or both.

Article 3. POWERS AND DUTIES

27240. The commission and each regional commission, may:

(a) Accept grants, contributions, and appropriations;

(b) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(c) Be sued and sue to obtain any remedy to restrain violations of this division. Upon request of the commission or any regional commission, the State Attorney General shall provide necessary legal representation.

(d) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this division, but no regulations shall be adopted without a prior public hearing.

27241. The commission and regional commissions may request and utilize the advice and services of all federal, state, and local agencies. Upon request of a regional commission any federally recognized regional planning agency within its region shall provide staff assistance insofar as its resources permit.

27242. All elements of the California Comprehensive Ocean Area Plan, together with all staff and funds appropriate or allocated to it, shall be delivered by the Governor and shall be attached and allocated to the commission at its first meeting.

27243. The commission and each regional commission shall each elect a chairman and appoint an executive director, who shall be exempt from civil service.

CHAPTER 4. CALIFORNIA COASTAL ZONE CONSERVATION PLAN

Article 1. Generally

27300. This commission shall prepare, adopt, and submit to the Legislature for implementation the California Coastal Zone Conservation Plan.

27301. The coastal zone plan shall be based upon detailed studies of all the factors that significantly affect the coastal zone.

27302. The coastal zone plan shall be consistent with all of the following objectives:

(a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

(b) The continued existence of optimum populations of all species of living organisms.

(c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

(d) Avoidance of irreversible and irretrievable commitments of coastal zone resources.

27303. The coastal zone plan shall consist of such maps, text and statements of policies and objectives as the commission determines are necessary.

27304. The plan shall contain at least the following specific components:

(a) A precise, comprehensive definition of the public interest in the coastal zone.

(b) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(c) A component which includes the following elements:

(1) A land-use element.

(2) A transportation element.

(3) A conservation element for the preservation and management of the scenic and other natural resources of the coastal zone.

(4) A public access element for maximum visual and physical use and enjoyment of the coastal zone by the public.

(5) A recreation element.

(6) A public services and facilities element for the general location, scale, and provision in the least environmentally destructive manner of public services and facilities in the coastal zone. This element shall include a power plant siting study.

(7) An ocean mineral and living resources element.

(8) A population element for the establishment of maximum desirable population densities.

(9) An educational or scientific use element.

(d) Reservations of land or water in the coastal zone for certain uses, or the prohibition of certain uses in specific areas.

(e) Recommendations for the governmental policies and powers required to implement the coastal zone plan including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

Article 2. Planning Procedure

27320. (a) The commission shall, within six months after its first meeting, publish objectives, guidelines, and criteria for the collection of data, the conduct of studies, and the preparation of local and regional recommendations for the coastal zone plan.

(b) Each regional commission shall, in cooperation with appropriate local agencies, prepare its definitive conclusions and recommendations, including recommendations for areas that should be reserved for specific uses or within which specific uses should be prohibited, which it shall, after public hearing in each county within its region, adopt and submit to the commission no later than April 1, 1975.

(c) On or before December 1, 1975, the commission shall adopt the coastal zone plan and submit it to the Legislature for its adoption and implementation.

CHAPTER 5. INTERIM PERMIT CONTROL

Article 1. General Provisions

27400. On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency.

Except as provided in Sections 27401 and 27422, no permit shall be issued without the affirmative vote of a majority of the total authorized membership of the regional commission, or of the commission on appeal.

27401. No permit shall be issued for any of the following without the affirmative vote of two-thirds of the total authorized membership of the regional commission, or of the commission on appeal:

(a) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(b) Any development which would reduce the size of any beach or other area usable for public recreation.

(c) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches and the mean high tideline where there is no beach.

(d) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.

(e) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential commercial and sport fisheries, or agricultural uses of land which are existing on the effective date of this division.

27402. No permit shall be issued unless the regional commission has first found, both of the following:

(a) That the development will not have any substantial adverse environmental or ecological effect.

(b) That the development is consistent with the findings and declarations set forth in Sections 27001 and with the objectives set forth in Section 27302.

The applicant shall have the burden of proof on all issues.

27403. All permits shall be subject to reasonable terms and conditions in order to ensure:

(a) Access to publicly owned or used beaches, recreation areas, and naturel reserves is increased to the max'mum extent possible by appropriate dedication.

(b) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(c) Provisions are made for solid and liquid waste treatment, disposition, and management which will min'mize adverse effects upon coastal zone resources.

(d) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

27404. If, prior to the effective date of this division, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights, if prior to April 1, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material.

27405. Notwithstanding any provision in this chapter to the contrary, no permit shall be required for the following types of development:

(a) Repairs and improvements not in excess of seven thousand five hundred dollars ($7,500) to existing single-family residences; provided, that the commission shall specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(b) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the permit area, pursuant to a permit from the United States Army Corps of Engineers.

Article 2. Permit Procedure

27420. (a) The commission shall prescribe the procedures for permit applications and their appeal and may require a reasonable filing fee and the reimbursement of expenses.

(b) The regional commission shall give written public notice of the nature of the proposed development and of the time and place of the public hearing. Such hearing shall be set no less than 21 nor more than 90 days after the date on which the application is filed.

(c) The regional commission shall act upon an application for permit within 60 days after the conclusion of the hearing and such action shall become final after the tenth working day unless an appeal is filed within that time.

27421. Each unit of local government within the permit area shall send a duplicate of each application for a development within the permit area to the regional commission at the time such application for a local permit is filed, and shall advise the regional commission of the granting of any such permit.

27422. The commission shall provide, by regulation, for the issuance of permits by the executive directors without compliance with the procedure specified in this chapter in cases of emergency or for repairs or improvements to existing structures not in excess of twenty-five thousand dollars ($25,000) and other developments not in excess of ten thousand dollars ($10,000). Nonemergency permits shall not be effective until after reasonable public notice and adequate time for the review of such issuance has been provided. If any two members of the regional commission so request at the first meeting following the issuance of such permit, such issuance shall not be effective and instead the application shall be set for a public hearing pursuant to the provisions of Section 27420.

27423. (a) An applicant, or any person aggrieved by approval of a permit by the regional commission may appeal to the commission.

(b) The commission may affirm, reverse, or modify the decision of the regional commission. If the commission fails to act within 60 days after notice of appeal has been filed, the regional commission's decision shall become final.

(c) The commission may decline to hear appeals that it determines raise no substantial issues. Appeals it hears shall be scheduled for a de novo public hearing and shall be decided in the same manner and by the same vote as provided for decisions by the regional commissions.

27424. Any person, including an applicant for a permit, aggrieved by the decision or action of the commission or regional commission shall have a right to judicial review of such decision or action by filing a petition for a writ of candate pursuant to Section 1084 of the Code of Civil Procedure, within 60 days after such decision or action has become final.

27425. Any person may maintain an action for declaratory and equitable relief to restrain violation of this division. No bond shall be required for an action under this section.

27426. Any person may maintain an action for the recovery of civil penalties provided in Sections 27500 and 27501.

27427. The provisions of this article shall be in addition to any other remedies available at law.

27428. Any person who prevails in a civil action brought to enjoin a violation of this division or to recover civil penalties shall be awarded his costs, including reasonable attorneys fees.

CHAPTER 6. PENALTIES

27500. Any person who violates any provision of this division shall be subject to a civil fine not to exceed ten thousand dollars ($10,000).

27501. In addition to any other penalties, any person who performs any development in violation of this division shall be subject to a civil fine not to exceed five hundred dollars ($500) per day for each day in which such violation persists.

CHAPTER 7. REPORTS

27600. (a) The commission shall file annual progress reports with the Governor and the Legislature not later than the fifth calendar day of the 1974 and 1975 Regular Session of the Legislature, and shall file its final report containing the coastal zone plan with the Governor and the Legislature not later than the fifth calendar day of the 1976 Regular Session of the Legislature.

CHAPTER 8. TERMINATION

27650. This division shall remain in effect until the 91st day after the final adjournment of the 1976 Regular Session of the Legislature, and as of that date is repealed.

Sec. 2. Section 11528.2 is added to the Business and Professions Code, to read:

11528.2. The clerk of the governing body or the advisory agency of each city or county or city and county having jurisdiction over any part of the coastal zone as defined in Section 27100 of the Public Resources Code, shall transmit to the office of the California Coastal Zone Conservation Commission within three days after the receipt thereof, one copy of each tentative map of any subdivision located, wholly or partly, within the coastal zone and such Commission may, within 15 days thereafter, make recommendations to the appropriate local agency regarding the effect of the proposed subdivision upon the California Coastal Zone Conservation Plan. This section does not exempt any such subdivision from the permit requirements of Chapter 5 (commencing with Section 27400) of Division 18 of the Public Resources Code.

This section shall remain in effect only until the 91st day after the final adjournment of the 1976 Regular Session of the Legislature, and as of that date is repealed.

Sec. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. There is hereby appropriated from the Bagley Conservation Fund to the California Coastal Zone Conservation Commission the sum of five million dollars ($5,000,000) to the extent that any moneys are available in such fund and if all or any portions thereof are not available then from the General Fund for expenditure to support the operations of the commission and regional coastal zone conservation commissions during the fiscal years of 1973 to 1976, inclusive, pursuant to the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code.

Sec. 5. The Legislature may, by two-thirds of the membership concurring, amend this act in order to better achieve the objectives set forth in Sections 27001 and 27302 of the Public Resources Code.

Appendix B

Court of Appeal Decision Staying Trial of Eminent Domain Action

Not to be Published in Official Reports

Filed—Nov 17, 1978
Court of Appeal—First App. Dist.
Clifford C. Porter, Clerk

By .....
Deputy

In the Court of Appeal of the State of California
First Appellate District
Division Two

1 Civil No. 44236
(Sup.Ct. No. M-7917)

People of the State of California, etc.,
Petitioner,

v.

Superior Court of the County of Monterey,
Respondent.

Mitzi S. Briggs,
Real Party in Interest.

Petitioner, People of the State of California, acting by and through the State Public Works Board (hereafter State), is the plaintiff in an eminent domain action in which real party in interest, Mitzi S. Briggs (hereafter Briggs),

is defendant. State seeks relief by prerogative writ to compel respondent superior court to vacate its order setting the action for trial. State contends that judgment has already been rendered against State and in favor of Briggs in an inverse condemnation action involving the identical parcel of land which is the subject of the eminent domain action, that the judgment has been appealed by State, and that to proceed with the trial of the eminent domain action while the appeal is pending would be useless litigation, which would require the expenditure of more than a million dollars in trial costs, consume six weeks of trial court time, and compel at least one, if not both of the parties, to take a second appeal.[1]

It appears from the record that two separate actions involving the same parcel of oceanfront land owned by Briggs have been instituted in the Superior Court of Monterey County. In the first action, commenced on August 22, 1975, Briggs, as plaintiff, sought damages from State for inverse condemnation of certain real property consisting of approximately 35.6 acres of undeveloped land located in Monterey County near Carmel on the cost of the Pacific Ocean. A nonjury trial on the issue of liability commenced on January 10, 1977; respondent court determined that State had inversely condemned and damaged Briggs' property.[2] On

1. By directing the issuance of an alternative writ of mandate to be heard before this court, the Supreme Court necessarily determined that there is no adequate remedy in the ordinary course of law and that this case is a proper one for the exercise of original jurisdiction (5 Witkin, Cal. Procedure (2d ed. 1971) p. 3870).

2. After the court had determined the issue of liability, State sought a continuance and on March 24, 1977, State filed a petition for writ of mandate/prohibition in this court (1 Civ. No. 41031, Div. Three) seeking to compel the superior court to vacate its decision, findings of fact and conclusions of law entered in favor of Briggs at the close of the liability phase of the bifurcated trial. That petition was denied on March 25, 1977, and a petition for hearing was denied by the Supreme Court on May 5, 1977.

May 12, 1977, State deposited the sum of $1,750,000 as the probable amount of compensation. A jury, in a trial which commenced on August 29, 1977, rendered a verdict of $3,900,000 as the fair market value of the property on March 27, 1975. Briggs' other claims for damages were bifurcated and tried by the court. Finally, on March 30, 1978, judgment was entered in favor of Briggs and against State in the sum of $6,429,437.48, offset by the sum of $1,750,000 previously deposited as the probable amount of compensation, for a total of $4,679,437.48. Of this sum, $957,002.63 was awarded to Briggs for litigation expenses, including attorney fees. On April 27, 1978, State filed notice of appeal, and on May 8, 1978, Briggs filed notice of cross-appeal. The appeal and cross-appeal are presently pending before this court (1 Civ. No. 44189).[3]

On December 31, 1976, ten days prior to the date trial commenced on the inverse condemnation action, State filed its action against Briggs in eminent domain, seeking to condemn the identical parcel of land for the Carmel River State Beach Project, an extension of the State Park System.[4] On February 10, 1977, shortly after the trial of the liability issues in the inverse condemnation action, Briggs answered and cross-complained. Significantly, the cross-complaint incorporated by reference the complaint filed in the inverse condemnation action and sought damages for the same conduct which was at issue in the inverse condemnation action.

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3. The appellant State was in default for failure to timely designate the record on appeal at the time this petition was filed in our court. State filed application for relief from default on May 22, 1978. Briggs filed opposition on May 30, 1978. On July 6, 1978, this court granted the motion for relief from default with conditions.

4. The State Public Works Board adopted a resolution selecting the site and authorizing acquisition of the real property on September 27, 1976. The Budget Act of 1974 contained an appropriation for acquisition of real property for use of Carmel River State Beach.

On January 17, 1978, Briggs noticed a motion to specially set the eminent domain action for trial. On March 30, 1978, over the objection of State, respondent court granted this motion, and set September 11, 1978, as the trial date for the eminent domain action. On May 9, 1978, State's motion for reconsideration of the order of March 30 was denied.

State contends that no useful purpose could be served by trial of the eminent domain action because the issues raised by the cross-complaint in the eminent domain action are, in large part, identical to those involved in the pending appeal and cross-appeal from the judgment in the inverse condemnation action and may or may not be resolved by the appeal. State argues that if the judgment in the inverse condemnation is *affirmed,* trial of the eminent domain action would have wasted more than six weeks of trial court time and added a million dollars in costs to the parties; a *reversal* of the judgment in the inverse condemnation action would necessitate a subsequent reversal on appeal of any judgment entered in the eminent domain action, since the cross-complaint in that action raises precisely the same issues litigated in the inverse condemnation action.

If, in a prior action between the same parties, a judgment was rendered which, if final, would be *res adjudicata* on some or all of the issues involved in the second action, the trial court in the exercise of a sound discretion may continue the trial of the second action until the final adjudication of an appeal pending from the first judgment (Houghton v. Superior Court (1922) 187 Cal. 661, 666; California C. Mach. Co. v. Superior Court (1935) 3 Cal.2d 606, 609; 4 Witkin, Cal. Procedure (2d ed.) Trial, § 15, p. 2872).

We have determined, under all the circumstances shown to exist in this matter, that respondent court's attempt to proceed with the trial of the eminent domain action while

the appeal on the inverse condemnation judgment is pending was an abuse of discretion. Any recovery in the inverse condemnation action, which proceeded to judgment first, would bar a duplicate award for the same damage in a subsequent eminent domain proceeding (Klopping v. City of Whittier, 8 Cal.3d 39, 58). Since Briggs' cross-complaint in the eminent domain action incorporates by reference the allegations of her inverse condemnation action and seeks damages for the same conduct, a trial of the eminent domain action at this time (if the same procedure is applied, with some issues tried by the jury and other issues by the court) could lead to contradictory decisions or awards relating to the same controversy, to multiple litigation, and to the pyramiding of expenses, such as costs and attorney fees.

Let a peremptory writ of mandate issue commanding respondent court to stay the trial of the eminent domain action until the final determination of the pending appeal from the judgment in the inverse condemnation action.

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Taylor, P.J.

We Concur:

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Kane, J.

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Rouse, J.